



Paper No. 7

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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of
Burbank, et al.
Application No. 09/431,008
Filed: November 1, 1999
Attorney Docket No. 17742-000630

DECISION ON PETITION

This is a decision on the "Request to Set Aside Notice of Incomplete Nonprovisional Application", filed February 12, 2001, which is being treated as a Petition Under 37 CFR 1.53(e).

Application papers in the above-identified application were filed on November 1, 1999. However, on January 24, 2001, the Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application papers had not been accorded a filing date because the specification was missing. In addition, the Notice informed applicant that the statutory basic filing fee was missing. The absence of the filing fee was not grounds for failing to accord the application a filing date, however.

A review of the application file reveals that a specification was filed on November 1, 1999. As such, the "Notice of Incomplete Nonprovisional Application" appears to have been mailed in error. Therefore, to the extent that the Notice states that the application has not been accorded a filing date, the Notice is hereby vacated. However, to the extent that the Notice states that the statutory basic filing fee was missing, the Notice remains entered.

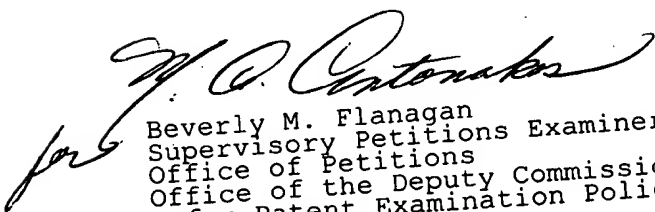
In view thereof, the petition is GRANTED.

Given the basis for granting the petition, the petition fee was not charged to counsel's Deposit Account, as requested.

Office records presently show the filing date of this application as February 12, 2001.

Accordingly, the application is being returned to the Office of Initial Patent Examination for correction of the filing date to November 1, 1999.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.

for 
Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy